Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)	
Extending Wireless Telecommunications Services to Tribal Lands)	WT Docket No. 99-266
)	

Reply Comments of the Office of Advocacy, U.S. Small Business Administration

The Office of Advocacy of the United States Small Business Administration ("Advocacy") ¹ respectfully submits these Reply Comments in the above-captioned proceeding, ² which is designed to promote wireless provision of basic telephony to unserved Native American tribal lands and other unserved areas. As indicated in Advocacy's Comments, filed on November 9, 1999, this proceeding encourages large businesses to provide wireless phone service, to the detriment of small business. ³ Specifically, the Commission proposes to lift transfer restrictions on C- and F-Block personal communications service ("PCS") licenses, which restrictions assure small business provision of PCS. The Commission also proposes to offer future bidding credits to companies that commit to serve unserved areas, without regard to business size. Last, the Commission's regulatory flexibility analysis fails to discuss the impact that these proposals would have on small business and fails to propose alternatives that would minimize this impact.

¹ Congress established Advocacy in 1976 by Pub. L. No. 94-305 to represent the views and interests of small business within the Federal government. (Codified as amended at 15 U.S.C. §§ 634 a-g, 637.) Advocacy monitors agency compliance with the RFA and reports this to Congress.

² Extending Wireless Telecommunications Services to Tribal Lands, Notice of Proposed Rulemaking, WT Docket No. 99-266, FCC 99-205 (rel. August 18, 1999); 64 Fed. Reg. 49,128 (1999).

³ See Comments of the Office of Advocacy, U.S. Small Business Administration, WT Docket No. 99-266, November 9, 1999.

1. The Commission's Proposals Disadvantage Small Businesses

The Commission has established incentives to encourage small business participation in PCS spectrum auctions by setting aside the C- and F-Blocks for small businesses or "designated entities" ("DEs"). These incentives fulfill a statutory mandate to avoid excessive concentration of licenses and to disseminate licenses among a wide variety of applicants, including small and rural businesses.⁴ The Commission currently prohibits transfer of these licenses from small businesses (DEs) to non-DEs (e.g. large entities) during the first five years of the license term,⁵ but now proposes to eliminate these restrictions for license areas containing tribal lands. The Commission reasons, "it is likely that non-DEs will have more of the resources necessary to build out on tribal lands and other unserved areas, particularly in more remote areas." Advocacy interprets this to mean that small business, in the Commission's view, cannot provide these services.

This conclusion is unsupported by any evidence. Neither the Commission nor any other commenter provides information to justify this conclusion. In point of fact, the businesses most likely to serve unserved tribal lands are existing local businesses. Many of these are small businesses. It is probably more reasonable to assume that the businesses that would attach value to unserved tribal lands are those businesses that already have ties to tribal lands, regardless of business size. Certainly this hypothesis is more credible than that which underlies the Commission's conclusion. The important feature is the local nature of the companies that serve rural and tribal lands. The Commission should concentrate its efforts on encouraging existing local businesses to expand their services, either through wireless or other technologies.

⁴ See 47 U.S.C. § 309(j)(3)(B). ⁵ NPRM, para 35.

Several commenters have indicated that the Commission should provide regulatory relief on a larger scale than simply the targeted tribal lands. That is, a small business (DE) should be able to transfer its entire basic trading area ("BTA") to a non-DE, not just the portion of the BTA that contains the unserved tribal land. This proposition is outrageous and goes beyond the scope and stated goals of this rulemaking. Since many PCS BTAs contain tribal or other unserved areas, this proposition threatens to undermine small business provision of PCS generally. Lifting DE transfer restrictions from an entire BTA doubtless adds to the value of the transfer of the unserved areas within the BTA, but it is unclear how this increases the likelihood that a big business transferee would provide service to outlying areas. Chances are it does not. There is no evidence that only large businesses would or could serve these areas, and certainly no evidence to justify eliminating DE provisions for whole BTAs.

This BTA idea also points up a basic problem with the Commission's DE proposal: valuation. An entire BTA has value whereas an unserved rural area within the BTA does not have value. But this is mainly true from the perspective of a newcomer. Existing service providers already value their customers and would expand their service if possible. The key to getting service to unserved areas is increasing the economic feasibility of providing service. Any business, small or large, will react to economic incentives but it is the local business, with community ties and existing good will, that is more likely to fill in its service areas and not confine itself to populous areas.

In the words of San Carlos Apache Telecommunications Utility Inc., which provides telecommunications and other utility service, there is "no reason to believe that the large carriers'

⁷ See, eg., Comments of Bell Atlantic Mobile, Inc., WT Docket 99-266, November 9, 1999, Comments of Titan Wireless, WT Docket 99-266, November 9, 1999.

historic indifference to serving the most rural areas will change perceptibly in the future. Larger, non-local carriers will continue their practice of concentrating on pockets of profitability." The Commission should not eliminate its DE transfer restrictions, nor should it grant DE benefits in future auctions without regard to business size. If the Commission is serious about increasing penetration on tribal lands, it should focus on ways to help those companies that currently serve these rural communities, and should not take actions that would undermine small business participation in PCS, particularly in the absence of any indication that large businesses would increase service to tribal lands.

2. The Commission's IRFA Does Not Discuss the Regulatory Impact on Small Entities Nor Does it Propose Alternatives Designed to Minimize the Impact.

The Commission's initial regulatory flexibility analysis ("IRFA") is entirely inadequate. The Commission does not discuss the significant economic impact its proposal would have on small business nor does it propose alternatives to minimize this impact, as is required by the RFA. ⁹ In fact, the Commission's designated entity proposals would tend to ensure that PCS licenses for tribal lands go to large business, and would discourage small business participation. The Commission offers no discussion of this impact.

The Commission also fails to propose a single alternative that would bring local phone service to tribal lands with minimal impact on small business. ¹⁰ The Commission lists general alternatives, but none designed to minimize impact on small business. In fact, the Commission lists its designated entity proposals among its "IRFA alternatives", even though these would

⁸ Comments of San Carlos Apache Telecommunications Utility, Inc., WT Docket 99-266, November 9, 1999, p 5. ⁹ 5 U.S.C. § 603(c).

¹⁰ The RFA requires four enumerated alternatives: (1) different compliance requirements or timetables, (2) clarification, consolidation, or simplification of compliance requirements, (3) use of performance rather than design standards, and (4) exemption – either in whole or in part – for small entities. The Commission does not propose or analyze a single one of these alternatives and proposes none of its own. 5 U.S.C. § 603(c)(1)-(4).

impose burdens on small business, not minimize them. The Commission does not discuss the precise extent of these burdens and why they are nevertheless justifiable in the public interest.

The Commission should not promulgate rules in this proceeding until it has analyzed the significant impact its proposals might have on small business and until it has proposed alternatives designed to minimize this impact while serving the Commission's regulatory goals.

Conclusion

The Commission's proposed changes to its designated entity provisions risk driving small and local wireless businesses from the market. The Commission identifies the serious problem that some rural and tribal residents lack access to vital communications. But the Commission concludes, without support, that designated entity provisions contribute to this problem and that small wireless businesses cannot provide these services. The Commission ignores entirely the impact its rules may place on small entities and proposes no alternatives to minimize this impact.

This rulemaking takes a wrong approach. The Commission should take a closer look at which companies provide telephony services to rural localities and work with those companies to provide economic incentives to fill in service gaps that have left some Americans without basic communications.

Respectfully submitted,

Jere W. Glover Chief Counsel for Advocacy

R. Bradley Koerner Assistant Chief Counsel for Telecommunications

December 8, 1999